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Supreme Court of the United States.

October Term, 1918.

No.

EL BANCO POPULAR DE ECONOMIAS Y PRESTAMOS DE SAN JUAN, P.R.,
PLAINTIFF, APPELLANT,

v.

ELIAS R. WILCOX,
DEFENDANT, APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

Brief of Plaintiff, Appellant, in Support of Jurisdiction.

BOYD B. JONES,
Solicitor for Appellant.

GEORGE C. GOODWIN & SON, LAW PRINTERS, BOSTON.

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No.

EL BANCO POPULAR DE ECONOMIAS
Y PRESTAMOS DE SAN JUAN, P.R.,
Plaintiff, Appellant,
v.
ELIAS B. WILCOX,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

Brief of Plaintiff, Appellant, in Support of Jurisdiction.

Statement of Case.

This is an appeal from a final decree of the Circuit Court of Appeals reversing the final decree of the District Court of the United States for the District of Porto Rico ordering the defendant to pay to the plaintiff $9631.92, the amount due on two mortgages of real estate in Porto Rico, the unpaid principal of which amounted to $6300, directing, in default of such payment, a foreclosure of the mortgages by sale and establishing a personal liability of the defendant for said

indebtedness, which, as stated in the opinion of the Circuit Court of Appeals in this case, when thus established could be enforced as to any deficiency by suit against him.

Coney v. *Winchell*, 116 U.S. 227, 230.

The few references to the record are not supplemented by the page numbers, because the parties have not yet received the printed copies of the record.

Argument.

The motion to dismiss is based upon the ground thus stated in the defendant's brief: "The jurisdiction of the district court was based solely upon the diverse citizenship of the parties, the bank being a Porto Rican corporation and Wilcox a citizen of the United States."

But the jurisdiction of the District Court was not based upon diversity of citizenship; it rested upon the fact, as alleged in the bill of complaint, that the defendant was a citizen of the United States; and consequently the case is not one wherein the decree of the Circuit Court of Appeals is final, section 128 of the Judicial Code, but is one wherein there is an appeal of right to the Supreme Court under section 241 of the Code.

The Act of April 12, 1900, c. 191, sec. 34, 31 Stat. 84, created the District Court of the United States for the District of Porto Rico, with the "ordinary jurisdiction of district courts of the United States," as well as "jurisdiction of all cases cognizant in the circuit courts of the United States."

Under the Act of August 13, 1888, c. 866, sec. 1, in

force at the enactment of the statute above referred to, the Circuit Courts of the United States had jurisdiction of controversies "between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs," the sum or value of $2000.

The present suit is one between a corporation created by the laws of Porto Rico and a citizen of that territory—

Martinez v. *La Asociacion De Senoras*, 213 U.S. 20—

and a citizen of the United States resident in Porto Rico. This controversy, therefore, is not between citizens of different states, because a citizen of a territory is not a citizen of a state and diversity of citizenship in the statutory sense does not exist.

New Orleans v. *Winter*, 1 Wheat. 91.
Downes v. *Bidwell*, 182 U.S. 244, 259.

The local conditions of Porto Rico required that the jurisdiction of the United States District Court of Porto Rico should be extended to certain controversies wherein diversity of state citizenship did not exist, including any controversy involving $1000 to which a citizen of the United States was a party, regardless of the citizenship of the other party to the suit; and by the Act of March 2, 1901, c. 812, sec. 3, 31 Stat. 953, it was provided that—

> "the jurisdiction of the district court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the Act of April twelfth, nineteen hundred, extend to and embrace

> controversies where the parties, or either of them, are citizens of the United States, or citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of one thousand dollars."

Cases between citizens of Porto Rico not arising under the Federal laws were thus left outside of and cases to which a citizen of the United States or a subject of a foreign State is a party were brought within the jurisdiction of the District Court.

Section 128 of the Judicial Code as amended by the Act of January 28, 1915, c. 22, sec. 2, provides that—

> "The circuit courts of appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the district courts, including the United States district court for Hawaii and the United States district court for Porto Rico, in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court, as provided in section two hundred and thirty-eight, unless otherwise provided by law; and, except as provided in sections two hundred and thirty-nine and two hundred and forty, the judgments and decrees of the circuit court of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States; also in all cases arising under the patent laws, under the trade-mark laws, under the copyright laws, under the revenue laws, and under the criminal laws, and in admiralty cases."

The decree of the Circuit Court of Appeals in the present case is not final, first, because the jurisdiction of the District Court was not "dependent entirely upon the *opposite* parties to the suit or controversy being aliens and citizens of the United States or citizens of different States" in that, by the Act of March 2, 1901, already quoted, its jurisdiction existed by the mere fact of the defendant's being a citizen of the United States, and, second, because the parties to this suit are not an alien on the one side and a citizen of the United States on the other, inasmuch as the plaintiff was a citizen of Porto Rico—

Martinez v. *La Asociacion De Senoras*, 213 U.S. 20;
Barrow Steamship Co. v. *Kane*, 170 U.S. 100—

and was neither a citizen of a foreign country—

De Lima v. *Bidwell*, 182 U.S. 1;
Porto Rico v. *Castillo*, 227 U.S. 270—

nor a citizen of a state.

Barney v. *Baltimore*, 6 Wall. 280.

It therefore follows that this Court has jurisdiction of the appeal under section 241, which is as follows:

> "In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs."

The defendant's contention that, under sections 128 and 241 of the Judicial Code, appeals to the Supreme Court are authorized only in those cases which might have been appealed directly from the District Court, is untenable.

Korbly, Receiver, v. *Springfield Institution for Savings,* 245 U.S. 330.

Respectfully submitted,
BOYD B. JONES,
Solicitor for Appellant.